No. 16560.

In the Supreme Court of the United States.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY,

Plaintiff in Error,

VS.

THE STATE OF OHIO, ex rel GEORGE L. LAWRENCE,

Defendant in Error.

Brief for Defendant in Error.

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LEGAL & COMMERCIAL PUBLISHING CO.
CLEVELAND.

In the Supreme Court of the United States.

THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY,

Plaintiff in Error,

vs.

THE STATE OF OHIO, EX REL GEORGE L. LAWRENCE,

Defendant in Error.

STATEMENT OF THE CASE.

Statement of the Case.

The original action out of which this proceeding sprung, was brought before a justice of the peace, under the provisions of Section 3320, of the Revised Statutes of Ohio, which provides that "each company shall cause three, each way, of its regular trains carrying passengers if so many are run daily, Sundays excepted, to stop at a station, city, or village, containing over three thousand inhabitants, for a time sufficient to receive and let off passengers; if a company,.....violate, or cause or permit to be violated, this provision,.....such company,.....shall be liable to a forfeiture of not more than one hundred nor less than twenty-five dollars, to be recovered in an action in the name of the State, upon the complaint of any person, be-

lement the Case.

fore a justice of the peace of the county in which the violation occurs,....."

By an agreed statement of facts covering the entire controversy, (See Rec. page 13, middle of page,) the cause was tried solely upon the question of the constitutionality of the provisions of the Statute; and upon that question alone, is it here.

irst Point.

FIRST POINT.

Defendant in Error contends that the section of the Statute here involved, is not a regulation of, nor a burden upon interstate commerce.

That it has no application to trains which are engaged in interstate commerce, (**unless the railroad companies so choose;**) but is a proper, reasonable, and needful rule of conduct, local in its sphere of operation, prescribed by the State, for the government and control of corporations of its own creation, upon a subject or question **wholly** and **exclusively** within State jurisdiction.

That neither directly or by implication, is interstate commerce referred to by it, nor could such commerce be affected by complying with its requirements, **except at the behest of the railroad companies to which its provisions apply.** That it is neither repugnant or contrary to either the letter or spirit of the provisions of the Constitution of the United States, which confers upon Congress the power to regulate commerce among the several States.

Neither was it construed and held by the courts of Ohio to apply to the trains of plaintiff in error which were engaged in interstate commerce, nor the penalty imposed

by the said statute inflicted upon plaintiff in error for failure to comply with its requirements **by stopping any train or trains which were engaged in interstate commerce.** First Point

The Ohio courts found as conclusions of law, (See Record page 18,) "That the requirements of said section "3320, Revised Statutes of Ohio as amended April 13, 1889, "Ohio Laws, volume 85, page 291, **are in no sense a regula-"tion of commerce between the States.** That the provision "of this section is the regulation by the State of a corpor-"ate body of its own creation with reference to the domestic "and local concerns of the State. That the fact that said "corporation has engaged in carrying interstate passengers, "does not oust the legislative control of the State, and the "said act of the legislature of Ohio is not in derogation of "section 8, article 1, of the Federal Constitution."

It is true that the provisions of the section in question, do require that three trains daily shall stop, if so many are run; but it does not prevent the railroad companies from running as many through trains that are not required to stop at these specified stations, as they may choose, providing, however, that if three or more trains are run, at least three of them shall stop.

We contend that although a railroad company may engage in interstate commerce, yet the State granting that company its charter, may regulate and control it in all local and domestic matters.

Can it be rationally contended for one minute, that because a railroad company which has received its charter from a State, engages in carrying interstate passengers, and for sooth, such passengers are to be found upon all of its

Point. trains, that fact alone, would oust the State of its legislative control of such railroad, or railroad company, in regard to the number of trains the company should run, or where trains should stop?

Defendant in Error contends that a State has the right, and power, to require all railroads operated within the State, to furnish and run (within the State) as many trains, and in such manner, and with such regulations as to stoppages, as such State may deem proper and necessary for the accommodation of the public; and that such requirement **by the State,** is in no just sense an interference with interstate commerce.

Is there anything in the section of the Statutes here in controversy, that is not within the limits of this power? It simply requires any railroad company that runs three or more regular trains carrying passengers both ways through any city, village, or station, within the State, having 3,000 inhabitants, to stop three (at least) of them each way at said places; leaving the company to employ as many trains in interstate commerce, that do not stop at said stations as the company may choose.

Plaintiff in Error contends that on each of the passenger trains, passing through the village of West Cleveland, (the town in question) which did not stop therein, there were passengers who had paid through fare, and were entitled to ride on said trains from the city of Chicago to the city of Buffalo, or from the city of Buffalo to the city of Chicago; and that said trains were therefore engaged in interstate commerce. Grant it. But was there anything to hinder the railroad company from putting on there

trains which should stop at these stations, if it did not want the trains which were engaged in interstate commerce to stop? Or is there anything in this section that attempts to designate what **particular** trains shall stop? Any railroad company that does not run three, each way of regular trains carrying passengers, is not affected by this statute; and any company which runs that number of trains, **has its own choice** as to whether it will stop at these stations with its trains which are engaged in carrying interstate passengers, or place other trains on the road which shall so stop. Thus the question of interfering with interstate commerce, is **left entirely in the control and management of the railroad companies**. First Point.

So that if, in the case at bar, interstate commerce would be interfered with, by plaintiff in error complying with the provisions of this section of the statutes of Ohio, such interference cannot be attributed to the requirements of the **statute,** but to the free and untrammeled choice of plaintiff in error. Is that fact standing alone sufficient to warrant this court in finding that the section in question is a regulation of interstate commerce, and therefore, repugnant and contrary to the Constitution of the United States? We apprehend that the constiutionality of a law is not determined upon the mere suspicion of a possibility that a strict complyance with its provisions might under some peculiar culmination of circumstances seem to conflict with the Supreme Law of the Land, but rather upon the absolute certainty, that a compliance with its terms and requirements, would, or would not violate or conflict with that instrument.

SECOND.

If the section of the Ohio Statute here in question does affect interstate commerce, it is only local in its sphere of operation, and is a rule of that character which is best made and enforced by the local State Government, and is valid and binding until such time as Congress may see fit to enact laws which cover the same question, with which these local laws are at variance.

That interstate commerce, like all other industries, require regulation no one will deny, or that these artificial beings by which it is carried on, control a large part of the active wealth of the country, and exercise a concentrated power for good or evil, far greater than natural persons possibly can.

If such organizations, composed largely of persons residing out of the State, and clothed with loose and unguarded powers by other states or nations, can exercise these franchises within the State without sharing the public burdens, restrictions and regulations of that government which protects them, and free from the control and responsibility to which domestic corporations are subject, is it not easy to see that the day is not far distant when, with these superior advantages, the most important business interests in the State will have passed beyond its control?

Except for the provisions of Section 8, Article 1, of the Constitution of the United States, the power to regulate interstate commerce would have rested solely in the State by virtue of its sovereign power.

If the State cannot enforce the provisions of the section under consideration here, and the Federal Government does not enact suitable regulations in that direction, (and we insist that it has not,) then the whole matter will be left to the discretion and caprice of these great, dangerous, and unscrupulous corporations. Second.

Is it possible that this power was relinquished by the States for such a purpose as that? Or that if having taken it from the State, the National Government would be so lax in its duties, as to allow it to fall into the hands of those who above all others, are the most unsafe, and unqualified, to administer it? We insist that such a construction of the Constitution of this Government, would be foreign to our principles of State Sovereignty, unprecedented by the decision of any Court of the land, and unwise and pernicious in its results. **The State must of necessity** have this right.

The most that can be said, and in fact all that can be said against this section of our State Law, is that it interferes with the speed of trains; and that it imposes a burden on railroad companies. Does that fact alone make it unconstitutional? Burdens are not necessarily **regulations.**

In the case of Crutcher vs. Kentucky, 141 U. S. Reports, (page 61,) Justice Bradley says: "It is within the **undoubted power of the State legislature,** to make regulations with regard to the speed of railroad trains in the neighborhood of cities and towns. Such regulations are eminently local in thier character, and in the absence of Congressional regulation over the same subjects, **are free from all Constitutional objections, and unquestionably valid."**

ond. In Escanaba Co. vs. Chicago, 107 U. S. Reports, page 683, Justice Field says: "But the States have full power to regulate within their limits, matters of internal police; including in that general designation, whatever will promôte the peace, **comfort, convenience, and prosperity** of their people."

Let us ask, is not the whole object and aim of this Section 3320, merely to promote the comfort, convenience, and prosperity of the people of Ohio who may reside at or have occasion to visit these designated towns and cities?

The reports of the decisions of this Court, as well as all others, abound with cases illustrating and recognizing the rule that **all local arrangements and regulations** respecting highways, **railroads,** bridges, canals, ferries and wharves, within the State, their location, supervision, **and details of management,** though necessarily affecting commerce, both internal and external, and thereby incidentally operating measurably upon transaction of interstate commerce, are within the power and jurisdiction of the several States.

In Railroad Co. vs. Hudson, 95 U. S. Rep. 465, Justice Strong, in handing down the opinion of the Court says: "We admit that the deposit in Congress of the power "to regulate foreign commerce and commerce among the "States **was not a surrender** of that which may properly be "denominated police power. What that power is, it is diffi- "cult to define with sharp precission; it extends to the "protection of lives, limbs, health, **comfort,** and quiet of all "persons **and the protection of all property** within the State. "Many acts of a State may, indeed, affect commerce, with-

"out amounting to a regulation of it, in the constitutional "sense of the term." Second.

If a State may not determine the number of trains that shall stop at designated stations, and the frequency of such stops, has it any power to prevent a railroad company from promoting or retarding at pleasure, the growth, prosperity, and welfare of towns, cities and country along its line of road, or wrecking the entire business interests of any particular locality against which the railroad directors might cheerish some animosity? It seems to us that the mere possibility of such injustice and injury being perpetrated on the citizens of a State, not only warrants, but demands such action on the part of the State government as will effectually prevent its consummation; and that could only be effected by prescribing the number and kind of trains that should take on and deliver freight and passengers at these specified towns and stations, the frequency of such service, and the charges allowed therefor. To make railroad directors the sole and ultimate arbiters in these matters, would be hazardous in the extreme; and no state or government should be presumed so to have intended, without the most clear and positive statement by it, of such intention.

In Gloucester Ferry Co. vs. Pennsylvania, 114 U. S. Rep., 196-203, it is said by the Court: "The power to re-"gulate commerce with foreign nations and interstate com-"merce is vested in Congress, including the power to pre-"scribe the rules by which it shall be conducted. The "power also embraces within its control all the instrumen-"talities by which it may be aided and encouraged. The

cond. "subjects, therefore, upon which the power may be exerted "are of infinite variety. **With reference to some of them, "which are local and limited in their nature or sphere of "operation, the States may prescribe regulations until Con- "gress intervenes and assumes control of them."**

Can there be any doubt that the requirements and provisions of the section of the statutes in controversy at bar are local and limited in their nature or sphere of operation? Then if they are, even though they may impose a burden upon Plaintiff in Error in its pursuit of interstate commerce, yet these are such as the State has undoubted power to impose, and in the absence of Congressional regulation over the same subjects, are free from all Constitutional objections, and unquestionably valid, as they do not necessarily compel any delay nor affect interstate commerce in the carriage of passengers, in any way which is not permitted by the Federal Constitution.

Whether a railroad company would have the right to start its train, say at Chicago with passengers for Buffalo, and pass through all the States lying between, without taking on or discharging passengers at any intermediate point; and that none of the intervening States would have a right to require such trains to receive or discharge passengers within their limits, as Plaintiff in Error maintains, is not as I apprehend, a question or principle that is involved in this case, for in so far as this section of the Statutes is concerned, it might have a score of trains thus engaged, if only it was running the three trains each way daily over its road which did stop at these designated stations for the convenience of local passenger travel.

In Cooley's Constitutional Limitations, 3rd Ed., 580 and 581, the learned author says: "It cannot be doubted "that there is **ample power in the legislative department of "the state** to adopt all necessary legislation for the purpose "of enforcing the obligations of railway companies as car- "riers of persons and goods, to **accommodate the public im- "partially,** and to make every reasonable provision **for car- "rying with safety and expedition."** Second.

In Hegman vs. Western R. Co., 16 Barb., 353, the Court well says: "There is also the general police power "of the State by which persons and property are subject to **"all kinds of restraints and burdens,** in order to secure the "general comfort and prosperity of the State, **of the perfect "right in the legislature to do which** no question ever was "or upon acknowledged general principles can be made so "far as natural persons are concerned. And it is certainly "calculated to excite surprise and alarm that the **right** to "do the same in regard to railroads should be made a ser- "ious question. Railroads are public highways, and are "to be conducted in furtherance of the public objects of "their creation. Railroad charters **are contracts** made by the "legislature **in behalf of every person interested in any- "thing to be done under them. In consideration** of the fran- "chise they receive from the State, railroad corporations **"agree to perform certain duties toward the public. The "power of determining** those duties, **and enforcing their "performance is vested in the appropriate tribunals of the "State.** Without such power there would be danger that "railroad corporations, from the number and extent of their "operations, might become the most powerful instruments

cond. "of oppression in our whole system of administration. Be-
"ing creatures of the law, entrusted with the exercise of
"sovereign powers to subserve public necessities and uses,
"they are bound to conduct their affairs in furtherance of
"the public objects of their creation."

The Courts of Massachusetts had this same subject under consideration in Commonwealth vs. Eastern R. R. Co., 103 Mass. 258, and sustained the constitutionality of an act of the legislature compelling the railroad company to establish a flag station on its road and erect a station house there, **at which at least two trains each way on each day should stop.**

In the case of R. R. Commissioners vs. P. & O. C. R. R. Co., 63 Main Reports, page 280, the above case is cited and approved, and the Court therein say: (and the language of the court is peculiarly appropriate to the case at bar,) "If the directors of a railroad were to find it for "the interest of the corporation to refuse to carry any "freight or passengers, except such as they might take at "one end of the road and carry entirely through to the "other end, and were to refuse to establish any way sta-"tions, or to do any business for that reason, though the "road passed for a long distance through a populous part "of the State, this would be a cause manifestly requiring "and authorizing legislative interference; and on the same "ground, if they refuse to provide reasonable accommoda-"tions for the people of any smaller locality, the legislature "may reasonably interfere, so as to make the duty to pro-"vide the accommodation absolute." The second clause of the syllabus reads as follows: "It is not within the discre-

"tion of the directors of a railroad company **ultimately and** Second. •
"conclusively to determind the manner in which the cor-
"poration shall discharge the public duties enjoined upon
"it by its charter; that power and duty are devolved upon
"the **State Tribunals.**"

At page 281, the Court say: "In determining this "question, it should be remembered that the object of the "grant was to secure the construction of a public highway, "and that to be serviceable to the public, such highway "must be accessable and available at other places than the "termini, **and oftener than once a month or once a week** or "indefinitely and irregularly. The charter must have a "construction reasonable and consistent with the public "objects to be promoted under it, and not such an one as "tends to impair, defeat or subvert these objects. The "duty of the corporation and the rights of the public in "these respects are the same, even if the charter simply "requires the corporation to keep its road in repair, furnish "it with rolling stock and receive and convey passengers "and freight along the line of its road. Under such pro-"visions of a charter, it would be the duty of a corporation "to keep the road reasonably safe, provide such rolling "stock, establish such depots, and operate the road in such "a manner as would afford the public reasonable safety "and dispatch in the transaction of business upon the "road. The duties enjoined upon the corporation are min-"isterial duties, to do and perform what **the public con-"venience and necessity reasonably require** in respect to the "particulars specified. Nor is it within the discretion of "directors to determine ultimately what these public min-

Second.

"isterial duties are, or the manner in which they are to be "performed; to hold so would be to concede to the directors "the power to promote the private interests of the corpora- "tion, by subverting the public objects to be subserved by "the charter; the power both of determination and enfor- "cement are **necessarily vested in the State Authority."**

"To make railroad directors the sole and ultimate "judges of the times and places, when and where, the cor- "poration will 'receive and convey persons and articles' on "the line of its road, would be to give railroad corporations "the power to control the markets of the country, to create "a surplus or a famine in agricultural and other products; "to raise or reduce the wages of labor, or to promote or "retard at pleasure, the growth, prosperity, and welfare of "towns, cities and country. A construction that leads to "such results is inconsistent with the nature of the grant "to the corporation, contrary to its spirit, and subversive "of the public objects it was intended to promote. The "legislature will not be held to be so indifferent to the trust "committed to it, as to divest itself and the State tribunals "of authority over the manner in which the franchises "granted by it are to be exercised in the important particu- "lars under consideration, unless its intention to do so is "expressed in specific terms."

Says Mr. Justice Harlan in handing down the opin- ion of the Court, in N. Y. N. H. and H. Railroad vs. New York, 165 U. S. Reports, 632: "Such statutes," (referring to a local law of the State in regard to heating passenger cars and putting guard rails on bridges,) "are not directed "against interstate commerce. Nor is it within the mean-

"ing of the Constitution a regulation of commerce, al- Second.
"though it controls, in some degree the conduct of those en-
"gaged in such commerce. So far as it may affect interstate
"commerce, it is to be regarded as legislation in aid of
"commerce, and **enacted under the power remaining with**
"the State to regulate the relative rights and duties of all
"persons and corporations within its limits. Until dis-
"placed by such national legislation as Congress may right-
"fully establish under its power to regulate commerce with
"foreign nations and among the several States, the validity
"of the statute, so far as the commerce clause of the Con-
"stitution of the United States is concerned, cannot be
"questioned."....."These inconveniences cannot affect
"the question of power in each State to make such reason-
"able regulations.....as in its judgment, all things consi-
"dered, is appropriate and effective. Inconvenience of this
"character cannot be avoided so long as each State has
"plenary authority within its territorial limits to provide
"for the safety of the public, according to its own views
"of necessity and public policy, and so long as Congress
"deems it wise not to establish regulations on the subject
"that would displace any inconsistent regulations of the
"States covering the same ground.....The authority con-
"ferred by section 5258 of the Revised Statutes of the Uni-
"ted States upon railroad companies engaged in commerce
"among the States, whatever may be the extent of such
"authority, does not interfere in any degree **with the pass-**
"age by the States of laws having for their object the per-
"sonal security" (or convenience) "of passengers while
"traveling, within their respective limits, from one State

ond. "to another on cars propelled by steam."

See also, to the same point, Smith v. Alabama, 124 U. S. Reports, 465.

In Hennington v. Georgia, 163 U. S. Reports, 299, this Court decided that an act of the legislature of that State, which forbide the running of freight trains on any railroad in the State on Sunday, and provided for the trial and punishment, on conviction, of the superintendent of a railroad company violating that provision, that, "Although "it affects interstate commerce in a limited degree, yet it "is not, for that reason, a needless intrusion upon the dom- "ain of Federal jurisdiction, **nor strictly a regulation of in- "terstate commerce,** but is an ordinary police regulation, "designated to secure the well-being, and to promote the "general welfare of the people within the State, **and is not "invalid** by force alone of the constitution of the United "States; but is to be respected in the courts of the Union "until superseded and displaced by some act of Congress, "passed in execution of the power granted to it by the "Constitution. There is nothing in the legislation in "question in this case that suggests that it was enacted "with the purpose to regulate interstate commerce, or with "any other purpose than to prescribe **a rule of civil duty** "for all who.....are within the territorial jurisdiction of "the State."

If a State may, by virtue of the power remaining with it, to regulate the relative rights and duties of all persons and corporations within its limits, enact laws which by their enforcement, prevent the moving of **all freight trains** (including those which are engaged in interstate

commerce,) for one entire day out of every seven, may not a State under the same power, require railroad companies to stop a certain number of their passenger trains at designated stations, long enough to take on, and let off passengers; even though the railroad affected by such requirement, should see fit to limit the number of trains it would run over its road to such as were engaged in carrying interstate passengers; especially so, since the company is left entirely untrammelled in respect to determining the number of trains it will operate on its road, and as to what particular train shall stop. Second.

In County of Mobile v. Kimball, 102 U. S. Reports, 691, this Court declared, that "Commerce with foreign "countries and among the states, must be governed by "only one system of rules applicable alike to the whole "country, which Congress alone can prescribe.

But, "State legislation **is not forbidden** touching "matters either local in their nature of operation, or in- "tended to be mere aids to commerce, for which special re- "gulations can more effectually provide;" and on page 698 Mr. Justice Field in delivering the opinion of the Court, says: "The uniformity of commercial regulations, which "the grant of Congress was designed to secure against "conflicting State provisions, was necessarily intended only "for cases where such uniformity is praeticable. Where "from the nature of the subject **or the sphere of its opera- "tion** the case is local and limited, **special regulations "adapted to the immediate locality** could only have been "contemplated. State action upon such subjects can con- "stitute no interference with the commercial power of Con-

cond. "gress, for when that acts the State authority is suspended. "Inaction of Congress upon these subjects of a local nature "or operation, unlike its inaction upon matters affecting "all the States and requiring uniformity of regulation, is "not to be taken as a declaration that nothing shall be "done with respect to them, but is rather to be **deemed a "declaration that for the time being, and until it sees fit to "act, they may be regulated by State authority."**.....
"There has been, it is true, expressions by individual "judges of this Court, going to the length that the mere "grant of the commercial power, anterior to any action of "Congress under it, is exclusive of all State authority; but "there has been no adjudication of the Court to that "effect."

In the case at bar, Plaintiff in Error accepted its charter upon the implied condition that its franchise would be exercised subject to the power of the State to impose such reasonable regulations as the comfort, **convenience,** safety or welfare of society might require; and what is of more importance or of greater convenience and comfort to the public in connection with railway service, than to have trains stop at the stations on the line of their road at sufficiently frequent intervals to accommodate the public society. We maintain that the provisions and requirements of the section of the Statute in question, are only just and reasonable, and withal, exceedingly modest and on principle the least that could **reasonably** be expected, in return for the privilege and right of eminent domain, which the State conferred upon this corporation.

We further maintain that such requirements as the

section of the statute here in controversy provides, is in no way a regulation of, or interference with interstate commerce, but on the contrary **facilitates** it; for not every passenger who rides over this railroad from one State into another, gets on at large cities, or at the termini of the road, and who shall be able to say that the requiring of the trains to stop as provided, does not assist through passengers to take trains more frequently, and thereby aid interstate commerce. Second.

THIRD.

Third.

The Constitution of the United States, does not provide that commerce among the several States, shall be regulated **exclusively** by Congress. It neither expressly so declares, nor yet, by implication does its provisions warrant such construction.

It seems to us that Plaintiff in Error lays more stress on this part of section 8, of Article 1, of the Constitution of the United States, than sound reasoning and a careful study of that section will warrant.

It is true that the section declares that "The Congress shall have Power To regulate Commerce with Foreign Nations, and among the several States, and with the Indian Tribes." It also declares just as emphatically that "The Congress shall have Power To lay and collect Taxes, &c." In neither instance is the declaration made that such power shall be exclusive, **but shall have power,** the declaration being just as broad in the one case as in the other, and stands for no more in either, than it would if it had been written connectedly, and proclaimed that "The Congress

shall have Power To lay and collect Taxes, and to regulate Commerce with foreign nations, and among the several States."

Would any one ever suppose that because, "The Congress has this power to lay and collect taxes," this was a surrender on the part of the several States of their general taxing power, and that if Congress did not lay taxes, the General Government thereby intended that **no taxes should be laid,** and consequently any attempt on the part of a State to levy or collect taxes would be a violation of the Constitution of the United States? Such a proposition would be preposterous. Without such power no civilized State could discharge its functions. And could any civilized State discharge its functions without the power to regulate and control its own internal affairs, and especially the corporations of its own creation, even though to some extent interstate commerce should be regulated and controlled by such action of the State? Then are we not bound to assume that the framers of the Constitution of the United States took full cognizance of these facts when the section of the Constitution now under discussion was enacted, and that no intent to restrain or hamper the several State governments in the reasonable supervision and control of their own internal affairs, even though by so doing interstate commerce should in some degree be affected thereby, was intended either to be expressed or implied in that instrument.

No one will question the fact that if Section 8, Article 1, of the Constitution of the United States had not been adopted, the several States would have full, complete and

exclusive power to not only levy and collect taxes, but also to regulate commerce among themselves; nor can one doubt that if this Section 8, of Article 1, had provided that "The Congress shall have **exclusive power** to lay and collect taxes and regulate commerce among the several States, that such power had been taken from the States and vested solely in Congress." But inasmuch as in both instances it simply declares that Congress shall have power to do these things, and in no other language abridges the original State sovereignty in the premises, is it not a more reasonable and consistent construction of this section, in the light of Article 11, of the Articles of Confederation, of 1777, (which specifically declares that "Each State retains its "sovereignty, and **every power, jurisdiction and right,** which "is not by this confederation **expressly** delegated to the "United States, in Congress assembled,") to interpret this Section 8, as meaning simply that Congress has these powers and may, at its option assert them, but in the absence of any action on its part, **the States may within** their own limits, exercise all the authority in that behalf, that is **necessary** to the interests of good government. Third.

Had more been intended, by the framers of the Constitution, we are constrained to believe, that more apt and positive language would have been employed to express it. But with the wording as it is, and the necessity of certain local regulations to govern and control railroads, we see no conflict with the right of the State to prescribe rules which shall govern these corporations, in a reasonable way, as to the service they shall give to the communities along their lines within the State; and the question as to what is

reasonable in this respect, is most undoubtedly for the legislature to determine, and not for the courts.

And for these reasons and from the uniform holdings in the same way of the courts all over the land, we insist that the law in question is constitutional and valid; and wholesome in its operation, and ought to be sustained, and the judgment of the state courts affirmed.

W. H. POLHAMUS,
Attorney for Defendant in Error.

No. 95.

Opinion of Cir. Ct. of Ohio.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

Filed Dec 14, 1898.

No. 95.

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF OHIO EX REL. GEORGE L. LAWRENCE.

OPINION OF CIRCUIT COURT OF CUYAHOGA COUNTY, OHIO.

8 OHIO CIRCUIT COURT REPORTS, 220.

(Eighth Circuit, Cuyahoga County, O., Circuit Court, January Term, 1894.)

Before Baldwin, Caldwell, and Hale, JJ.

THE LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY
vs.
THE STATE OF OHIO *ex Rel.* GEORGE L. LAWRENCE.

Section 3320 of the Revised Statutes, directing that each railroad company shall cause three each way of its regular

trains carrying passengers, if so many are run daily, Sundays excepted, to stop at stations, cities, or villages having over three thousand inhabitants long enough to receive and let off passengers, is not a violation of that clause of the Constitution of the United States giving Congress power to regulate commerce among the several States, and is valid until Congress shall pass some act inconsistent therewith.

Error to the court of common pleas of Cuyahoga county.

BALDWIN, *J.*:

This action was originally one before a justice of the peace, by defendant in error, to recover a penalty under section 3320, Revised Statutes, for not stopping its trains at West Cleveland. The action went by appeal to the court of common pleas, was there decided in favor of the defendant in error, and we are asked in error to reverse the judgment of the court of common pleas.

The question raised is the validity of section 3320, Revised Statutes, and, without any formal recital, we will state such of the facts found by the court as seem proper to understand the bearing to that question.

On the 9th of October, 1890, the date complained of, the village was a municipal corporation having 3,000 inhabitants, and plaintiff in error was a corporation organized under the laws of Ohio and several other States, running and operating a railroad running through West Cleveland, and extending from Chicago to Buffalo, and daily ran thereon through said village each way three or more regular trains carrying passengers. On that day, not being Sunday, the company only stopped one of its trains running each way; that said railway was engaged in interstate commerce from Chicago to Buffalo; that there was not more than one regular passenger train each way not engaged in interstate commerce, or that did not have on board passengers who had paid their fares and

were entitled to ride through different States on said trains; that the one train each way not engaged in interstate commerce did stop at West Cleveland. Then follows an enumeration of trains running each way; a finding that the time required for stopping was three minutes; and that the total number of cities and villages on the line of the railroad having 3,000 inhabitants and over were thirteen in number.

The act in question provides:

"Each (railroad) company shall cause three each way of its regular trains carrying passengers, if so many are run daily, Sunday excepted, to stop at a station, city or village containing over three thousand inhabitants for a time sufficient to receive and let off passengers. If a company, or any agent or employé thereof, violate or cause or permit to be violated this provision, such company, agent or employé shall be liable to a forfeiture of not more than one hundred and not less than twenty-five dollars, to be recovered in an action in the name of the State, upon the complaint of any person before a justice of the peace of the county in which the violation occurs, for the benefit of the general fund of the county, etc."

It is claimed that this section of the statute is a regulation of commerce "among the several States," and therefore a violation of section 8 of the Constitution of the United States, providing that "Congress shall have the power to regulate commerce with foreign nations and among the several States and with Indian tribes;" that the legislature has no power to regulate the stopping of trains and that until Congress shall act, the railway company has absolute control of that matter, and may stop at stations or not as it pleases. This is a very important question, for if the railway has the power it claims, it can conduct its business with gross disregard of the interests of the public, and unmake towns and cities until Congress shall interfere.

A prior act has been before our supreme court in Penn-

sylvania Co. *vs.* Wentz, 37 Ohio St., 33. The court there said: "But the power of a railroad company to adopt or enforce such regulation is subject to legislative control," and the railroad company was held to be controlled by the act as passed in 1867, which is found in the Revised Statutes of 1880 as section 3320.

It is said, however, that the question of the constitutionality of the act itself was not discussed or decided in that case.

It is not contended that outside of the question made here, the company and the subject-matter is not proper for the action of the legislature; nor can it be. Ohio constitution, art. 13, par. 2; Penn. Co. *vs.* Wentz, 37 Ohio St., 333; Shields *vs.* State, 20 Ohio St., 86, and 95 U. S., 319.

Although the act in question may, and as the railroad company now conducts its trains, does affect the transportation of persons traveling through the State of Ohio from one State to another, we are of the opinion that the act is not a regulation of commerce between States, although it might be void if Congress, with its paramount authority, should pass an act with which this is inconsistent.

It is plain that the legislature had no intention to regulate the passage from State to State, but only to afford its own citizens proper and reasonable facilities for getting on and off the cars of a company created by it and subject to its reasonable regulations. Nor does the present act necessarily interfere with the rapid transit of a single passenger traveling through the State.

The act passed upon in 37 Ohio St. provides, "that every railroad company in this State shall cause *all* its trains of cars for passengers to entirely stop upon each arrival at any station."

The present act does not so provide, but only for three each way, if so many are run daily, Sundays excepted. It is not required that these shall be through trains, and no

proof was made that the regulation is so oppressive that it *necessarily* affects passengers from State to State.

It is not aimed at interstate commerce. It makes no discrimination against citizens of other States; it may even be for the convenience of interstate commerce as facilitating transportation to and from this place from other States.

The railroad may comply with the act solely by trains that do not engage in interstate commerce; that "it is not everything that affects commerce that amounts to a regulation of it within the Constitution," is a principle laid down in 15 Wallace, 293, and quoted with approval in 18 Wallace, 282, Delaware R. R. Tax.

It is determined in 21 Wallace, 473, that an act "may incidentally affect transportation," and still not amount to a regulation of commerce between the States or to a discrimination against the citizens of other States (Railroad *vs.* Maryland).

It is a part of the syllabus of Robbins *vs.* Shelby County, 120 U. S. Rep., 489, that "a State may enact laws that in practice operate to affect commerce among the States, as by providing in the legitimate exercise of its police power and general jurisdiction for the security and comfort of persons and protection of property;" and what more necessary for the comfort of persons and protection of propery than reasonable access for travel to a railroad passing through a town or city. (See also citation of the above case in State *vs.* Railway, 47 Ohio St., 137.)

"It cannot be doubted," says Mr. Cooley, "that there is ample power in the legislative department of the State to adopt all necessary legislation for the purpose of enforcing the obligations of railway companies or carriers of persons and goods to accommodate the public impartially, and to make every reasonable provision for carrying with safety and despatch" (Cooley in Const. Lim., 724, 581). Nor is the act one necessarily of a national character. It is local, and may better be regulated by local laws. At what towns

trains should stop may depend on the size, distance between stations, scarceness of population, how many trains each day, character of business and population, and many other considerations which might be enumerated.

The subject may well come into the characterization of the Supreme Court of the United States in 116 U. S. Rep., 334, Commissioners' case, where it said: "The State may certainly require the company to fence so much of its road as lies within the State, to stop its trains at railroad crossings, to slacken speed while running in a crowded thoroughfare, to post its tariffs and time-tables at proper places, and other things of a kindred character affecting the comfort, the convenience or the safety of those who are entitled to look to the State for protection against the wrongful or negligent conduct of others."

Nor can any embarrassment result from such local regulations; the whole subject in principle and convenient practice seems to us covered by the language to be found in Mobile *vs.* Kimball, 102 N. Y., 698:

"Where from the nature of the subject or the sphere of its operation the case is local, and limited special regulations adopted to the immediate locality could not have been contemplated, State action upon such subjects can constitute no interference with the commercial power of Congress; for when that acts the State authority is suspended. Inaction of Congress upon these subjects of a local nature or operation, unlike its inaction upon matters affecting all the States and requiring uniformity of regulation, is not to be taken as a declaration that nothing shall be done with respect to them; but is rather to be deemed a declaration that for the time being and until it sees fit, they may be regulated by State authority."

The constitutionality of an act requiring "all regular passenger trains to stop at county-seats long enough to receive and let off passengers with safety" was affirmed in Railroad Co. *vs.* The People, 105 Ill., 657.

Both this statute and that considered in 37 Ohio St. seem fairly to come within the rules laid down in Mobile *vs.* Kimball, *supra.* But if they did, the present act does not cover "all trains," and does not necessarily affect a single interstate passenger, for the railroad company might comply with it without stopping a single train.

We think the act is valid, and the decision of the court of common pleas is affirmed.

ESTEP, DICKEY, CARR & GOFF,
For Plaintiff in Error.

W. H. POLHAMUS,
For Defendant in Error.